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MEMORANDUM

TO: Local Boards of Health and
Code enforcement Agencies

FROM: Howard Wensley, M.S. C.H.O., Director
Division of Community Sanitation

DATE: February 24, 1997

SUBJECT: Housing Inspections and the Child Abuse Reporting Statute (M.G.L. C.119,s51A)

The department of Public Health has been asked if housing/code inspectors have a mandated duty to report evidence of child abuse. The following analysis and conclusion was developed by the Office of the General Counsel.

The applicable statute contains a list of the persons deemed to be responsible for reporting what they consider to be evidence of, or indications of, possible child abuse. (M.G.L., 1.119, s51A). Housing inspectors are not among those specifically enumerated as being responsible for reporting such information. The fourth paragraph of that section does state that any person may make such report if that person has reasonable cause to believe that a child is suffering from abuse or neglect. However, this paragraph stipulates that this is not an obligation and that the reporting individual will not be held liable for making a report or for failing to make a report. (The first paragraph lists all the personnel responsible for reporting this information and also states that their failure to report will subject them to a fine of up to \$1,000.)

CONCLUSION

There is no statutory mandate making housing inspectors responsible for reporting evidence of child abuse. However, as a policy matter, it should be noted that housing inspectors can make such a report and they will not be held liable for doing so. It is strongly recommended that any housing inspector should file a report whenever s/he suspects child abuse or neglect.

C.119 Sec. 51A Persons Required to Report Cases of Injured, Abused, or Neglected Children; Immunity from Criminal Action; Privilege Not to be Invoked; Penalty.

Any physician, medical intern, hospital personnel engaged in the examination, care or treatment of persons, medical examiner, psychologist, emergency medical technician, dentist, nurse, chiropractor, podiatrist, osteopath, public or private school teacher, educational administrator, guidance or family counselor, day care worker or any person paid to care for or work with a child in any public or private facility, or home or program funded by the commonwealth or licensed pursuant to the provisions of chapter twenty-eight A, which provides day care or residential services to children or which provides the services of child care resource and referral agencies, voucher management agencies, family day care systems and child care food programs, probation officer, clerk/magistrate of the district courts, parole officer, social worker, foster parent, firefighter or policeman, office for children licenser, school attendance officer, allied mental and human services professional as licensed pursuant to the provisions of section one hundred and sixty-five of chapter one hundred and twelve, drug and alcoholism counselor, psychiatrist, and clinical social worker, who, in his professional, or emotional injury resulting from abuse inflicted upon him which causes harm or substantial risk or harm to the child's health or welfare including sexual abuse, or from neglect, including malnutrition, or who is determined to be physically dependent upon an addictive drug at birth, shall immediately report such condition to the department by oral communication and by making a written report within forty-eight hours after such oral communication; provided, however, that whenever such person so required to report is a member of the staff of a medical or other public or private institution, school or facility, he shall immediately either notify the department or notify the person in charge of such institution, school or facility, or that person's designated agent, whereupon such person in charge or his said agent shall then become responsible to make the report in the manner required by this section. Any such hospital personnel preparing such report, may take, or cause to be taken, photographs of the areas of trauma visible on a child who is the subject of such report without the consent of the child's parents or guardians. All such photographs or copies thereof shall be sent to the department together with such report. Any such person so required to make such oral and written reports who fail to do so shall be punished by the fine of not more than one thousand dollars. Any person who knowingly files a report of child abuse that is frivolous shall be punished by a fine not more than one thousand dollars.

Said reports shall contain the names and addresses of the child and his parents or other person responsible for his care, if known; the child's age; the child's sex; the nature and extent of the child's injuries, abuse, maltreatment, or neglect, including any evidence of prior injuries, abuse, maltreatment, or neglect; the circumstances under which the person required to report first became aware of the child's injuries, abuse, maltreatment or neglect; whatever action, if any taken to treat, shelter, or otherwise assist the child; the name of the person or persons making such report; any other information which the person reporting believes might be helpful in establishing the cause of the injuries; the identity of the person or persons responsible therefore; and such other information as shall be required by the department.

Any person required to report under this section who has reasonable cause to believe that a child has died as a result of any of the conditions listed in said paragraph shall report said death to the department and to the district attorney for the county in which such death occurred and to the

medical examiners as required by section six of chapter thirty-eight. Any such person who fails to make such a report shall be punished by a fine of not more than one thousand dollars.

In addition to those persons required to report pursuant to this section, any such person may make such a report if any such person has reasonable cause to believe that a child is suffering from or has died as a result of such abuse or neglect. No person so required to report shall be liable in any civil or criminal action by reason of such report. No other person making such report shall be liable in any civil or criminal action by reason of such report if it was made in good faith; provided, however, that such person did not perpetrate or inflict said abuse or cause said neglect. Any person making such report who, in the determination of the department or the district attorney may have perpetrated or inflicted said abuse or cause said neglect, may be liable in a civil or criminal action.

No employer of those persons required to report pursuant to this section shall discharge, or in any manner discriminate or retaliate against, any person who in good faith makes such a report, testifies or is about to testify in any proceeding involving child abuse or neglect. Any such employer who discharges, discriminates or retaliates against such a person shall be liable to such person for treble damages, cost and attorney fees.

Within sixty days of the receipt of a report by the department from any person required to report, the department shall notify such person, in writing, of its determination of the nature, extent and cause or causes of the injuries to the child, and the social services that the department intends to provide to the child or his family.

Any privilege established by sections one hundred and thirty-five A and one hundred and thirty-Five B of chapter one hundred and twelve or by section twenty B of chapter two hundred and thirty-three, relating to confidential communications shall not prohibit the filing of a report pursuant to the provisions of this section or the provisions of section twenty-four.